

United States District Court
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DAMION D. FLOWERS

v.

ACUITY BRANDS LIGHTING,
et al.

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CIVIL NO. 3:19-CV-2090-S-BK

ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

On October 1, 2019, the United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. *See* ECF No. 8. On December 3, 2019, Plaintiff filed objections. *See* ECF No. 15. On May 11, 2020, the Court entered an order overruling Plaintiff's objections and, construing Plaintiff's objections as a motion for leave to amend, granted Plaintiff leave to file a proposed amended complaint by June 11, 2020, otherwise the action would be dismissed without prejudice for the reasons set forth in the Magistrate Judge's October 1, 2019 Findings, Conclusions and Recommendation. *See* ECF No. 18. As of the date of this order, Plaintiff has not filed a proposed amended complaint. Accordingly, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

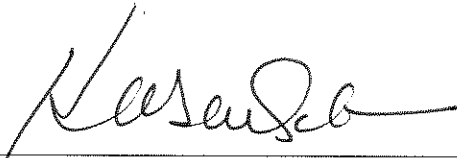
IT IS THEREFORE ORDERED that that this action is summarily **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. *See* FED. R. CIV. P. 12(h)(3).

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no

legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).¹ In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED.

SIGNED October 8, 2020



KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE

¹ Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the court certifies an appeal as not taken in good faith.